

**Snow Puts the Freeze on Some Workplaces**

It's that time of year, and Connecticut has already faced two snow storms that debilitated parts of the state during work and commuting hours. "Snow days" abound for public schools in the state, but how are private employers to handle these messy weather days.

Unless Connecticut declares a state of emergency, private employers decide how to handle their operations and employees during a snow storm.

How you handle a snow storm depends heavily on your organization's needs. Some employers may simply need to establish basic reporting procedures – if you are going to be late, please call in. Many employers these days have the capabilities to permit employees to work remotely, so procedures may be set up for employees work part or the whole day from home. Organizations that require 24/7 staffing, such as hotels and hospitals, may need to create more sophisticated policy and reporting procedures or may want to designate "essential" employees to ensure continuous operation.

If you do call for a complete "snow day" or allow late arrival/early dismissal, state and federal law only require pay for hourly, non-exempt workers for actual hours worked. Exempt, salaried employees must be paid their regular salary even if the employer closes early. Employers may implement a policy requiring exempt employees to use their Paid Time Off (PTO) to cover the time out of work. However, if an exempt worker has no PTO time available to her, the employer cannot deduct those snow hours from her regular salary.

Employers should keep in mind that docking a nonexempt employee for time lost if the employer closes its operations early or completely due to snow can have a demoralizing effect on the workforce – especially on those employees who make it to work for their regular shift, only to be told to head home.

With any luck, employers will not face too many more of these "snow day" decisions this winter season.

**IRS Issues Mileage Rates for 2011**

The IRS issued the 2011 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2011, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 51 cents per mile for business miles driven
- 19 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

**Reminder on Upcoming Seminar Sessions**

Thursday, January 13, 2011

**Morning Session**

Wage & Hour Law:  
State and Federal Audits and Compliance Guidance from the Experts  
\*\*With Guest Speaker Ronald Marquis,  
Assistant Director of the Wage and Workplace Standards Division of the Connecticut Department of Labor

**Afternoon Session**

Sexual Harassment Prevention

Contact us at [jessenianarvaez@robertnoonan.com](mailto:jessenianarvaez@robertnoonan.com), or by telephone for more information or to register.

**New Laws for Employers Effective January 1, 2011**

**Changes to Small Employer Insurance, Connecticut Public Act 10-4** changes parts of state laws that relate to small employer health insurance plans. For small groups, the act redefines “eligible employee” to include part-time employees working at least 20 hours a week and excluding seasonal employees. To determine who is a “small employer,” the Act prohibits the employer from counting a person working fewer than 30 hours a week as an eligible employee. So, a small employer is one who employs no more than 50 employees who regularly work 30 hours or more per week. The act requires an insurer or producer marketing small employer group health insurance plans to offer a small employer, upon its request, a premium quote for covering employees working at least (1) 30 hours a week or (2) 20 hours a week.

**Vocational Rehabilitation Job Creation Tax Credit, Connecticut Public Act 10-75, as amended by PA 10-1,** authorizes three-year insurance premium, corporation business, and personal income tax credits for businesses hiring Connecticut residents who have physical or mental impairments that make it hard for them to find work. The maximum credit is \$ 200 per month for each new employee. A business qualifies for credits only for employees hired after May 6, 2010 for the income years beginning on or after January 1, 2010. The employee must live in Connecticut, meet disability requirements, work at least 20 hours per week for at least 48 weeks per calendar year, and be on the payroll at the close of the business' income year. The act imposes a combined \$ 11-million-per-year cap on these credits, the small business job creation credits, and the credits authorized under the existing job incentive tax credit program. (Effective on passage and applicable to income years beginning on or after January 1, 2011.)

**Small Business Job Creation Tax Credit, Connecticut Public Act 10-75** authorizes three-year insurance premium, corporation business, or personal income tax credits for small businesses (fewer than 50 employees in Connecticut) that create new, full-time jobs filled by new employees living in Connecticut. The maximum credit is \$ 200 per month per new employee. Businesses qualify for the credits only for jobs they create between May 6, 2010 and December 31, 2012. The act imposes a combined \$ 11-million-per-year cap on these credits, the vocational rehabilitation job creation credits, and those authorized under an existing job incentive tax credit program. (Effective on passage and applicable to income years beginning on or after January 1, 2011.)

**Federal Payroll Tax Cut, pursuant to Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010,** means a 2 percent payroll tax cut for employees, reducing employee Social Security tax withholding rate from 6.2 percent to 4.2 percent of wage paid. Employers should begin using the new withholding tables and reducing the amount of Social Security tax withheld as soon as possible in 2011 but no later than Jan. 31, 2011.

The law was signed by President Obama on December 17. It extends the Bush-era tax cuts for two more years and reduces the payroll tax for employees effective immediately. The IRS recognizes that the late enactment of these tax changes may impose difficulty for immediate compliance; therefore the IRS has delayed enforcement until January 31 – giving employers until January 31 to update their pay withholding systems.

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For any Social Security tax over withheld during January, employers should make an offsetting adjustment in workers' pay as soon as possible but not later than March 31, 2011. Further information and guidance is available at:

<http://www.irs.gov/newsroom/article/0,,id=232590,00.html>.

**Federal GINA Regulations, effective January 10, 2011**, were issued by the EEOC on November 9 that implement the employment provisions (Title II) of the Genetic Information Nondiscrimination Act of 2008 (GINA). GINA prohibits use of genetic information to make decisions about health insurance and employment, and restricts the acquisition and disclosure of genetic information. GINA applies to private employers with 15 or more employees and generally prohibits employers from requesting an applicant's or employee's genetic information, even if the employer never uses that information. Employers should be sure to update their nondiscrimination policies and to print and post the EEOC's new poster addressing GINA: <http://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf>.

**Certain Health Care Reform Provisions** took effect for plan years beginning on or after September 23, 2010 (for calendar year plans, this means effective January 1, 2011). These provisions include: new insurance internal and external appeal procedures (does not apply to grandfathered plans); coverage of preventive benefits without cost sharing (does not apply to grandfathered plans); prohibition on lifetime limits, rescissions, and pre-existing condition exclusion for children; restriction on annual limits; and, coverage for dependent children up to age 26. In addition, beginning January 1, 2011, health insurers begin reporting medical loss ratios.

## Employer Health Plans Get One Year Break on Discrimination Rules

The IRS has delayed the non-discrimination requirement for non-grandfathered fully-insured plans under the Affordable Care Act (ACA). National health care reform called for non-grandfathered, fully-insured plans to not discriminate in favor of highly compensated employees under Section 105(h) of the Internal Revenue Code beginning on or after September 23, 2010 – which for most plans meant on January 1, 2011. On December 23, 2010, the IRS announced that non-discrimination compliance will be delayed until plan years beginning after the DOL and HHS issue regulations or other administrative guidance. There is no specific date anticipated for issuance of such guidance.

The IRS explains in Notice 2011-1 that the enforcement and compliance delay is necessary so that critical regulatory guidance can explain the effect and operation of the statutory provisions of the ACA which seek to impose nondiscrimination rules “similar to” the rules of Section 105(h)(2).

Code Section 105(h) continues to apply to self-insured plans subject to ERISA, as it has prior to and since the passage of the ACA.

### **Robert Noonan & Associates provides legal services to employers. The firm:**

- Represents primarily employers in employment discrimination cases;
- Writes and reviews employee handbooks;
- Advises employers on day-to-day workplace issues;
- Trains supervisors and managers in sexual harassment, interviewing, leave issues, performance appraisals and the law of the workplace.

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